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**DEC 17 2001**

**OFFICE OF PETITIONS**

In re Application of :  
Sharkey et al. :  
Application No. 09/895,609 :  
Filed: 29 June, 2001 :  
For: Surgical Instrument Having :  
Distal Face with First and Second :  
Electrodes :

ON PETITION

This is a decision on the petition filed on 10 October, 2001, requesting that the above-identified application be accorded a filing date of 29 June, 2001, with Pages 2 of the specification as a part of the original disclosure.

The petition is granted.

The application was filed on 29 June, 2001. However, on 17 August, 2001, Initial Patent Examination Division mailed a "Notice" stating that the application had been accorded a filing date but that Page 2 of the specification appeared to have been omitted.

In response, on 10 October, 2001, petitioners filed, *inter alia*, page 2 of the specification, the present petition, and a petition fee. Petitioners argue that Page 2 was filed with the other application papers on 29 June, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied on 10 October, 2001. The postcard receipt shows an Office date stamp of 29 June, 2001, and acknowledges receipt of, *inter alia*, 22 pages of specification, five (5) pages of claims, and one (1) page of abstract. Petitioners request that the application, including Page 2 of the specification, be accorded a filing date of 29 June, 2001.

A review of the record reveals that no Page 2 of the specification has been located among the application papers deposited on 29 June, 2001. However, the evidence is convincing that the application papers deposited on 29 June, 2001, included Page 2 of the specification, which was subsequently misplaced in the Office. Therefore, the application, including Page 2 of the specification, is entitled to a filing date of 29 June, 2001.

The "Notice" mailed on 17 August, 2001, is vacated.

In view of the above, the petition is granted. The petition fee will be refunded to counsel's deposit account, No. 06-1300.

The application will be processed and examined using the copy of Page 2 supplied on 10 October, 2001. The copies of the other application papers supplied on 10 October, 2001, will not be used for processing or examination, but will be retained in the application file.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 29 June, 2001, using the application papers filed on 29 June, 2001, and the copy of Page 2 of the specification supplied on 10 October, 2001.

Telephone inquiries should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.



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